

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT NICKLAY,

Plaintiff,

Case No. 1:08-CV-377

v.

Hon. Robert J. Jonker

JULIE REINKE, &
56-A DISTRICT COURT,

Defendants.

ORDER AND JUDGMENT
APPROVING REPORT AND RECOMMENDATION

The Court has reviewed the Magistrate Judge's Report and Recommendation (docket # 12) filed on June 2, 2008. Plaintiff filed his Objection to the Report and Recommendation (docket # 15) on June 20, 2008.

Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Court has reviewed de novo the claims and evidence presented to Magistrate Judge Brenneman; the Report and Recommendation itself; and Plaintiff's objections. After its review, the Court finds Magistrate Judge Brenneman's Report and Recommendation to be both factually sound and legally correct.

Plaintiff makes one objection to the Report and Recommendation. He claims that, contrary to the conclusion of the Report and Recommendation, Defendants are not immune from suit. He also reasserts his claim that Defendant Reinke set his bail at an excessive amount in violation of the Eighth Amendment.

Plaintiff's objection is without merit. As set forth in the Report and Recommendation, Plaintiff's complaint must be dismissed because both Defendants are immune from suit. Plaintiff makes no new arguments in his objection, and the cases he cites are irrelevant. They deal with state-law immunity and not the federal-law immunities applicable to Defendants. *See, e.g., Martinez v. California*, 444 U.S. 277, 284 n.8 (1980) (stating that conduct made actionable under § 1983 "cannot be immunized by *state law*" (emphasis added)).

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge, filed June 2, 2008, is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED THAT:

1. Plaintiff's complaint is DISMISSED WITH PREJUDICE on grounds of immunity; and
2. The Court finds no good-faith basis for appeal within the meaning of 28 U.S.C. § 1915(a)(3).

Dated: July 28, 2008

/s/ Robert J. Jonker

ROBERT J. JONKER

UNITED STATES DISTRICT JUDGE